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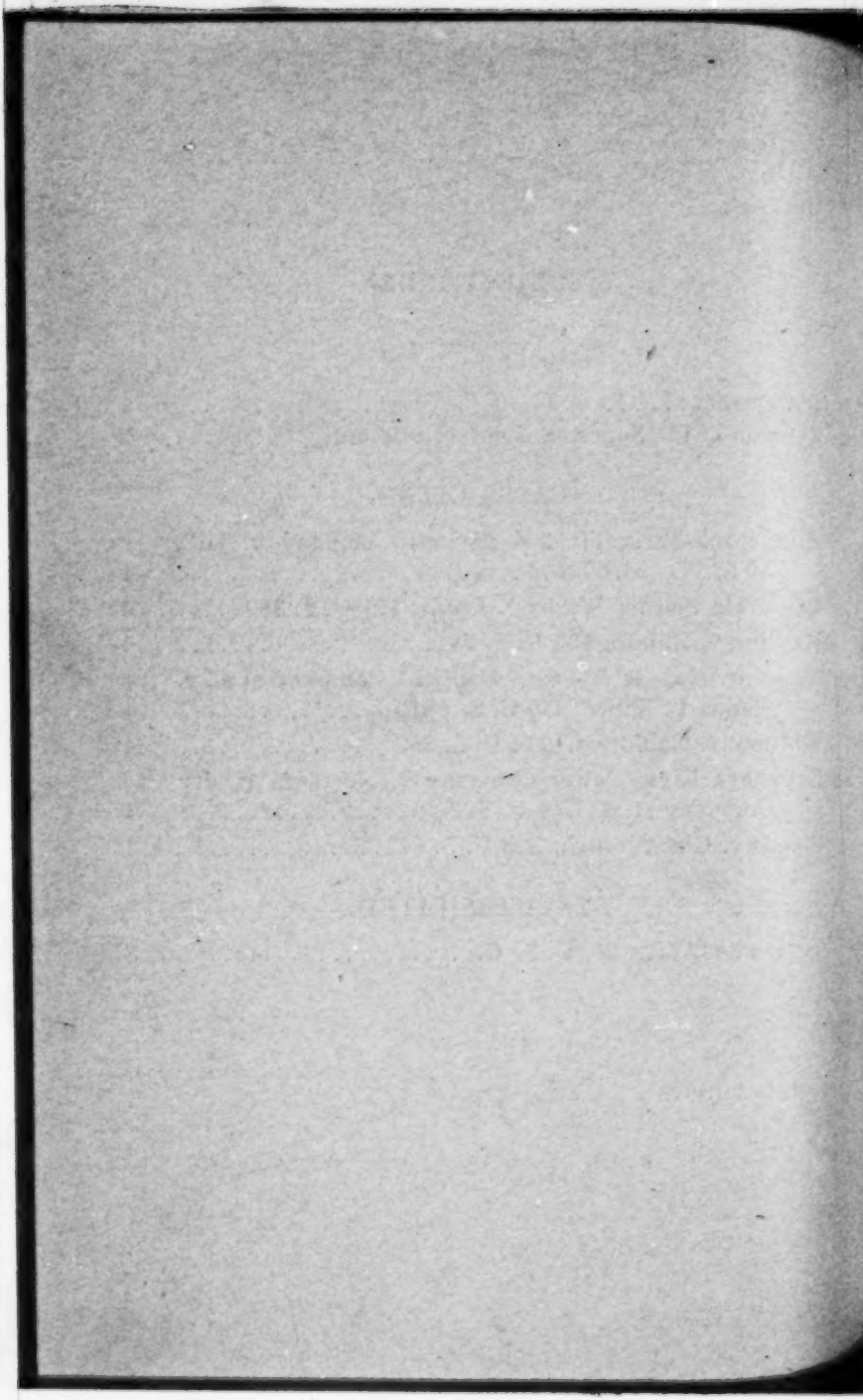
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No.....

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, *Petitioner*,

vs.

WALTER O. HILL, Treasurer and Ex Officio Collector in and for Henry County, Missouri, *Respondent*.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

Final judgment was rendered in the Supreme Court of Missouri in this case on the 29th day of June, 1929, and motion for rehearing was denied by said court August 2, 1929, case being reported in 19 S. W. (2d.) 746.

The petitioner instituted this action to enjoin the respondent as Treasurer and Ex officio Collector of Henry County, Missouri, from collecting twenty-five per cent of the taxes levied on the assessed valuation of its shares of stock against the respective owners of such shares, and alleged that all other classes of property in Henry County, Missouri, had been assessed for taxation at seventy-five per cent of its true value in money and that the shares of stock in the plaintiff bank and trust company had been assessed at its true value in money, and that such assessment was illegal and void because it constituted a deliberate, intentional and systematic discrimination against petitioner and a violation of its rights under Section 3 of Article X of

the Constitution of Missouri, Section 4 of Article X of the Constitution of Missouri, and Section 1 of Article XIV of the Constitution of the United States in that it deprives the plaintiff's shareholders of the equal protection of the laws and deprives them of their property without due process of law.

Upon the trial of such cause in the Circuit Court of Henry County, Missouri, on the merits, the finding and judgment was for the respondent and petitioner appealed to the Supreme Court of the State of Missouri where the judgment and finding of the trial court was affirmed.

The court held that as the petitioner did not appear before the County Board of Equalization of Henry County, Missouri, or the State Tax Commission of the State of Missouri, or the State Board of Equalization of the State of Missouri, and make complaint or request relief in regard to the assessment of its property, but failed to avail itself of the remedies provided by law, which remedies were adequate and complete, that it was not entitled to equitable relief. The court further held that petitioner having delayed instituting its action until after the assessment of its property and fixing of the valuation thereof for taxation had become final and the taxes had been extended thereon and certified to the respondent for collection, and until after the State, county and other political subdivisions of the State had entered into contracts and incurred liabilities based upon the estimated amount of revenue that would be produced under the assessment and taxation of property for that year, that petitioner was guilty of such laches that it was not entitled to recover.

BRIEF.

Respondent respectfully submits that the petition for the writ of certiorari herein is wholly insufficient in that it fails to definitely state where is drawn in question the validity of a statute of the State of Missouri on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

The only ground upon which the petitioner could claim to be entitled to the issuance of a writ of certiorari from this court to review the judgment of the Supreme Court of Missouri in this cause is the second clause of Section 344 of Title 28, U. S. C., which is as follows:

> " * * * or where is drawn in question the validity of a statute in any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, etc."

Petitioner makes no attack whatever upon any statute of the State of Missouri as being in violation of the Constitution, treaties or laws of the United States.

The question for determination by the Supreme Court of Missouri was whether or not there had been in fact any deliberate, systematic, intentional discrimination against the petitioner in the assessment of its property, and whether or not the petitioner had adequate remedies at law, and whether or not it availed itself of such remedies before applying for equitable relief, and whether or not the petitioner had been guilty of such laches as to bar it from equitable relief. On all of these issues the trial court and also the Supreme Court found against the petitioner. It was not necessary under the pleadings and facts in the case and issues raised for the court to determine the constitu-

tionality or validity of any statute and the only issue determined was in regard to the construction of the statutes.

When as in this case the decision of the state court is based on other than federal grounds, the writ of certiorari should not issue.

Harding v. Illinois, 196 U. S. 78.

When as in this case the decision of the state court is based on laches, the petitioner is not entitled to review.

Woods v. Chesborough, 228 U. S. 672.

The Supreme Court of the United States will not review on certiorari the decision of the Supreme Court of a state where that decision is based on the construction of the state's statutes unless it affirmatively appears that there has been drawn in question the validity of a statute of a state on the ground of it being repugnant to the Constitution, treaties or laws of the United States.

In order to give this court jurisdiction it must appear affirmatively not only that a federal question was presented for decision by the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it.

California Powder Works v. Davis, 151 U. S. 389;
Missouri, Kansas & Texas Railroad Co. et al. v. Hanna L. Zuber, 256 U. S. 681;
Whitney v. California, 274 U. S. 357.

Where the judgment of a state court may rest upon either a federal or a non-federal ground, and the basis actually adopted does not appear by the court's opinion or otherwise, this court has no jurisdiction to review.

Cuyahaga River Power Co. v. Northern Realty Company et al., 244 U. S. 300.

It appears from the decision of the Supreme Court of Missouri in this case that it was based upon the question of the remedies afforded the petitioner by statute. The court found that the remedies provided by statute for relief in such cases were adequate and complete and that the petitioner failed to avail itself of such remedies. It will be observed from the opinion of the Supreme Court of Missouri and from the petition for writ of certiorari filed in this court, that the petitioner made no claim and now makes no claim that any statute of the State of Missouri concerning the assessment and taxation of its shares of stock is contrary to, or in violation of the Constitution, treaties or laws of the United States.

Wherefore, respondent respectfully suggests that the petition for the writ of certiorari be denied.

Respectfully submitted,

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